

12155 Monroe Street
Wellington, FL 33414

March 29, 2018

Via Fax: 877-807-9215

Mail: IRS FOIA Request
HQ FOIA
Stop 211
PO Box 621506
Atlanta, GA 30362-3006

To Whom It May Concern:

I am making a FOIA request for certain records within the Office of Chief Counsel.

I request the following:

Any OCC Code and Subject Matter Directory in effect between 8/1/2013 and 11/19/2013

Emails between any of: Timothy L. Jones, Helen M. Hubbard, and/or Lewis Bell
regarding a pre-submission conference of any Private Letter Ruling request, between
6/1/2013 and 11/18/2013.

Files regarding PLR 201502008
CASE-MIS information, including all subsystems (e.g., TECHMIS)
Form 9718, Case History
Checksheet for Processing Private Letter Rulings (see IRM 32.3.2.3.2.13)
Form 9818, Case Processing
Bibliography
Any Requests for Assistance
Any responses to Requests for Assistance
Any communications with other areas of the IRS

I am willing to pay associated costs up to \$50, if necessary. Should the costs be higher
than that please let me know. If there are any questions about this request you can email
me at jescott@me.com or phone me at 917.225.5357.

Kind Regards,



James E. Scott

Exhibit 2

From: Edelman Aaron <Aaron.Edelman@irs.gov>
Subject: RE: IRS FOIA F18089-0001
Date: April 9, 2018 at 09:15:37 EDT
To: James Scott <jescott@me.com>

Got it – thanks you beat me to the email.

From: James Scott [mailto:jescott@me.com]
Sent: Monday, April 09, 2018 9:15 AM
To: Edelman Aaron <Aaron.Edelman@irs.gov>
Subject: Re: IRS FOIA F18089-0001

Aaron,

Thanks for the call this morning regarding this document request. Per our conversation, please delete from this request the paragraph regrind the emails between and among Mr. Jones, Ms. Hubbard, and Mr. Bell.

Thanks for your assistance.

Kind Regards,

Jim Scott

On Apr 9, 2018, at 09:04, Edelman Aaron <Aaron.Edelman@irs.gov> wrote:

From: Edelman Aaron
Sent: Wednesday, April 04, 2018 9:30 AM
To: 'jescott@me.com' <jescott@me.com>
Subject: IRS FOIA F18089-0001

Hi James,

Thank you for speaking with me and clarifying portions of your request. I will be sending the search memo to Office of Chief Counsel shortly. Please feel free to reach out if you have any questions during the processing of your request.

Thanks,

Aaron Edelman, Esq., CIPP/G
Government Information Specialist
IRS Disclosure Office 2
600 Arch Street, Room 7214
Philadelphia, PA 19106
P: (267) 941-6315
F: (855) 203-7002

Exhibit 3



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

May 31, 2018

James F. Scott
12155 Monroe Street
Wellington, FL 33414

Dear Mr. Scott:

This is our final response to your Freedom of Information Act (FOIA) request dated March 29, 2018 that we received on March 29, 2018.

You asked for: any Office of Chief Counsel Subject Matter Directory in effect between August 1, 2013 and November 19, 2013; any emails between Timothy Jones, Helen Hubbard and/or Lewis Bell regarding a pre-submission conference of any Private Letter Ruling request, between June 1, 2013 and November 18, 2013; and the following files regarding Private Letter Ruling 201502008: CASE-MIS information including all subsystems, Form 9718 Case History, Check sheet for processing Private Letter Rulings, Form 9818 Case Processing, Bibliography, Any requests for assistance, Any response to requests for assistance, and any communication with other areas of the Internal Revenue Service.

On April 9, 2018, you agreed to a rescope of your request that removed the portion of the request that sought any emails between Timothy Jones, Hellen Hubbard and/or Lewis Bell regarding a pre-submission conference of any Private Letter Ruling request, between June 1, 2013 and November 18, 2013.

Of the 826 pages located in response to your request, I am enclosing 696 pages. I am withholding 36 pages in part and 130 pages in full pursuant to FOIA exemptions (b)(3) in conjunction with IRC § 6103, (b)(5), and (b)(6).

FOIA exemption (b)(3) requires us to withhold from disclosure matters that are specifically exempted by statute. The information being withheld under FOIA exemption (b)(3) consists of third party tax information, the disclosure of which is prohibited by IRC section 6103(a).

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption are deliberative process, attorney work product and attorney-client. In this instance, only the deliberative process privilege is being asserted.

The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.

FOIA exemption (b)(6) exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

The redacted portions of each page are marked by the applicable FOIA exemptions. This constitutes a partial denial of your request.

A separate letter has been mailed to you to provide instruction on how to access the enclosed secured compact disc.

There is no fee associated with this request due to the FOIA Improvement Act of 2016's bar on certain assessments after the lapse of the statutory response period and the number of pages being duplicated resulting in a fee less than the minimum fee assessed by the Internal Revenue Service.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. I've enclosed Notice 393, *Information on an IRS Determination to Withhold Records Exempt From the Freedom of Information Act - 5 U.S.C. 552*, to explain your appeal rights.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact me, the FOIA Public Liaison, for assistance at (954) 991-4022 or at 7850 S.W. 6TH Court, Plantation, FL 33324-3202. I have enclosed Notice 393 explaining your appeal rights.

The FOIA Public Liaison responds to FOIA and Privacy Act requests for copies of documents maintained by the IRS. There is no provision in either Act to resolve tax, collection, or processing issues and our staff is not trained to answer questions regarding those issues. If you need assistance with tax related issues you may call the IRS toll free number at 1-800-829-1040.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's

office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
(202) 741-5770
(877) 684-6448
ogis@nara.gov
ogis.archives.gov

If you have any questions, please call Government Information Specialist Aaron Edelman, ID # 1001393988, at (267) 941-6315 or write to: Internal Revenue Service, Disclosure Office #2, P.O. Box 621506, Stop 211, Atlanta, GA 30362-3006. Please refer to case number F18089-0001.

Sincerely,



Jason Angelotti
Disclosure Manager
Disclosure Office 2

Enclosure
Responsive Records
Notice 393

Exhibit 4

June 12, 2018

IRS Appeals
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, CA 93727-5136

Re: Case #2018-00055

Dear IRS Appeals:

On March 29, 2018 I submitted a FOIA Request (Attachment 1) for:
Any OCC Code and Subject Matter Directory in effect between 8/1/2013 and 11/19/2013

Emails between any of: Timothy L. Jones, Helen M. Hubbard, and/or Lewis Bell
regarding a pre-submission conference of any Private Letter Ruling request, between
6/1/2013 and 11/18/2013.

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Form 9818, Case Processing
Bibliography
Any Requests for Assistance
Any responses to Requests for Assistance
Any communications with other areas of the IRS

My Request was assigned to Disclosure Office 2, Government Information Specialist
Aaron B. Edelman. (Attachment 2)

On April 9, 2018 I agreed to a reduction in scope that removed the portion of the request
that sought any emails between Timothy Jones, Helen Hubbard, and/or Lewis Bell
regarding a pre-submission conference of any Private Letter Ruling request between June
1, 2013 and November 18, 2013.

On May 31, 2018 I received a Final Response to the Request (Attachment 3), with 696
pages in full and 36 pages in part (i.e., with redactions), on an enclosed CD. The Final
Response said that the information on the pages withheld in part and the 130 pages
withheld in full was withheld because of FOIA exemptions (b)(3) in conjunction with
IRC §6103, (b)(5) – specifically “deliberative process” only, and (b)(6).

The Appeal

I hereby appeal the decision to withhold 130 pages in full. I also appeal the redaction of certain information in other documents that were provided to me in part. Finally, I challenge the adequacy of the search.

Adequacy of the search

According to the Case History there were communications with Branch 6 and with TEB. Any documents involved and call logs of telephone conversations were clearly covered by my request for "Any communications with other areas of the IRS". The Case History describes on 11-15-13 "Review of TEB TRS Abuse documents." Those should have been provided. Note that these would clearly be historical documents, and not "deliberative". Further, in response to a query submitted back to thru the disclosure specialist (see Attachment 4), the contacts with TEB and Branch 6 were termed "of an informal nature, and did not require, or result in, a written response." That hardly sounds like material integral to the deliberative process.

Redactions

It is clear that OCC was over-zealous in asserting Exemption (b)(5). First, as a reminder, this exemption is discretionary, not mandatory. In 1977, then-Attorney General Griffin Bell articulated four criteria to be applied in deciding whether to defend agency denials in court. "The third criterion, 'whether there is a sufficient prospect of actual harm to legitimate public or private interests if access to the requested records were to be granted,' was primarily aimed at the unnecessary use of Exemption 5." DOJ, FOIA Update, Vol. I. No. 1, January 1, 1979.

As I understand the way the response was handled, the office that made the decision also decided on the redactions. The overly broad claim that I believe has occurred is a brazen attempt by that office to stifle inquiry into their flawed professional performance. An independent party should review the redactions with a view to releasing more information, not less. The actual statute, 5 USC 552(a)(8)(A) provides that: "An agency shall withhold information under this section **ONLY IF** (emphasis added) (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law." The disclosure of the information is clearly NOT prohibited by law, and the agency cannot reasonably foresee such harm. The decision at issue, the actual PLR delivered, happened more than four years ago now, and is not subject to reinterpretation. It can only be withdrawn based on factual criteria as set forth in Rev. Proc. 2013-1, Sections 11.04 and 11.05.

Many of the redactions citing "(b)(5) – deliberative privilege" are clearly not entitled to be withheld either (1) based on when they occurred, or (2) because at least one of the parties is outside the deliberative process and providing historical and/or factual

information. The “deliberative process” claims on the Form 9718 Case History are puzzling, as that is supposed to be a chronology of significant actions (including research performed and file memoranda) rather than a collection of actual deliberative input. See IRM 30.9.1.2 The redactions in the email on p. 21 of 44 in the file PLR-147816-13 of “the branch that deals with ...”, based on (b)(5) – deliberative is yet another example.

The claim of exemption due to (b)(6) is a complete mystery (see pp. 21-22 of 44 in file PLR-147816-13). These are not “personnel or medical or similar files”, nor would the disclosure of the redacted name (?) “constitute a clearly unwarranted invasion of personal privacy.” There is an additional blank space on p. 22 that appears to be unexplained.

Pages withheld in full

As I do not know exactly what was withheld it is impossible to make a targeted appeal. I note that the statute provides that the agency “SHALL (emphasis added) take reasonable steps necessary to segregate and release nonexempt information.” (See 5 USC 552(a)(8)(A)(ii)(II)) I do not believe such “reasonable steps” could result in 130 pages being withheld in full.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Scott". The signature is fluid and cursive, with "James" on the left and "E. Scott" on the right, with a small "T" at the end of "Scott".

James E. Scott
12155 Monroe Street
Wellington, FL 33414
917.225.5357
jescott@me.com

Exhibit 5

Internal Revenue Service
Appeals Office
PO Box 24018
Fresno, CA 937790-4018

Date:

James E. Scott
12155 Monroe Street
Wellington FL 33414

Department of the Treasury

Person to Contact:

Loretta Buttacavoli
Employee ID Number: 1000684762
Tel: (916) 974-5374
Fax: (916) 974-5333

Refer Reply to:

AP:EX:SAC:LLB

In Re:

Freedom of Information Act
FOIA Case Number:
F18089-0001
FOIA Request Date:
6/12/2018

Dear Mr. Scott:

This letter is in response to your June 12, 2013 Freedom of Information Act (FOIA) appeal of the May 31, 2018 response of the Atlanta Office to your March 29, 2018 request for any Office of Chief Counsel Subject Matter Directory in effect between August 1, 2013 and November 19, 2013; any emails between Timothy Jones, Helen Hubbard and/or Lewis Bell regarding a pre-submission conference of any Private Letter Ruling request, between June 1, 2013 and November 18, 2013; and the following files regarding Private Letter Ruling 201502008: CASE-MIS information including all subsystems, Form 9718 Case History, Check sheet for processing Private Letter Rulings, For 9818 Case Processing, Bibliography, Any request for assistance, any response to requests for assistance, and any communication with other areas of the Internal Revenue Service.

You agreed on April 9, 2018 to a reduction in the scope that removed the request for emails sought between Timothy Jones, Helen Hubbard and/or Lewis Bell regarding the pre-submission conference of any Private Letter Ruling request between June 1, 2013 and November 18, 2018.

The Disclosure Office responded that 130 pages of documents was exempt from disclosure under subsection (b)(5) of the FOIA as protected by the deliberative process privilege. And was also exempt under IRC 6103(a) as it contained information specific to the requestor.

Your appeal argues that (1) you challenge the adequacy of the search, (2) the decision to withhold 130 pages in full, (3) the redaction of certain information in other documents that were provided to me in part.

We have reviewed the response of the Disclosure Office and have determined that it was appropriate under the circumstances.

First, we considered the adequacy of the search. Mr. Edelman made a second attempt to secure this information specific to your request for information. Mr. Edelman received

a response from Counsel and provided the response that “the contacts with TEB and Branch 6 were termed of an informal nature, and did not require, or result in a written response.”

In *Whitfield v Dep’t of Treasury*, 255 F. App’x 533, 534 (D.C. Cir. 2007) the agency’s failure to turn up specific documents does not undermine the determination that the agency conducted an adequate search for the requested records. This is further supported in *Physician Comm. For Responsible Med. v Glickman*, 117 F. Supp. 2d 1, 4 (D.D.C. 2000) acknowledging that individuals might have had personal “emails and telephone conversation,” but nevertheless declaring that there is no evidence...that the agency ever had these records, despite plaintiff’s insistence to the contrary. The Disclosure Office provided you with a response that there are no written documents supporting your request. This supports that an adequate search was performed.

Second, we considered the FOIA exemption (b)(5) to withhold 130 pages from release. The deliberative process privilege applies to documents that are both “pre-decisional” and “deliberative.” *Norwood v. FAA*, 993 F.2d 570, 576 (6th Cir. 1993). “A document is pre-decisional when it is received by the decisionmaker on the subject of the decision prior to the time the decision is made, and deliberative when it reflects the give-and-take of the consultative process.” *Id.* (Citations omitted.).

Review of the information includes handwritten notes, analysis of code sections and applicability to the circumstances specific to the private letter ruling. The information is intertwined; thus, the disclosure includes information specifically exempt under 26 USC §6103(a) specific to the requestor and is deliberative in nature with the attorneys who are writing the private letter ruling. The courts have held in *Mapother v DOJ*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) the deliberative process privilege protects materials that are both predecisional and deliberative and cites *Petroleum Info. Corp v U.S. Dep’t of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992).

These documents meet the “deliberative” requirement of the privilege because it demonstrates the consultative process between District Counsel Attorneys, TEB Branch 6 and the requestor with respect to the consideration of the private letter ruling.

Third, the consideration that a partially redacted document met the exemption of (b)(6). Appeals Officer, Lorretta Buttacavoli, contacted the Disclosure Officer and discussed the partial redaction. She determined that the redaction was appropriate. In *DOJ v Reporters Committee for Freedom of the Press*, the Supreme Court limited the concept of public interest under FOIA to the “core purpose” for which Congress enacted it. In other words, to shed light on the agency’s performance of its statutory duties. Information that does not directly reveal the operations or activities of the federal government, the Supreme Court repeatedly has stressed, “falls outside the ambit of the public interest that the FOIA was enacted to serve. Also in *Consumer’s Checkbook*, 554 F.3d at 1051 the court held that information about private citizens, that reveals little or nothing about an agency’s own conduct does not serve a relevant public interest under FOIA. There is no evidence that you have met your burden to establish the disclosure on public interest that these personal details should be disclosed. As a result, the Government has properly redacted pages 21 and 22 under exemption 6.

We reviewed the response of the Disclosure Office and have determined that it is appropriate under the circumstances. We sustain the non-disclosure of the documents under FOIA exemption (b)(3) in conjunction with IRC 6103, (b)(5) specific to the "deliberative process and (b)(6).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



P. Perez
Appeals Team Manager